AFR

1.06

55

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 219 of 2002

Petitioner : Mani Ram Dhruv

Versus

Respondents : State of Chhattisgarh, through, Secretary & others

---

Shri Ashok Patil, counsel for the petitioner.
Shri Arun Sao, Deputy Government Advocate for the respondent No. 1/State.
Shri Amit Verma, counsel for the respondent No. 2.
None appears for the respondents No. 3 and 4.

ORDER

(20th November, 2006)

1. The petitioner was appointed on temporary basis, by order dated 23.12.1998 (Annexure A/3), for a period of 2 years on probation with a condition that if the petitioner remains absent, his service can be terminated with one month's notice or one month's salary in lieu of notice. The petitioner was appointed in accordance with law.

2. The petitioner remained absent during probation period in the month of January for 5 days, February for 4 days, March for 8 days and April for 6 days, which is evident from the show cause notice dated 16.4.1999 (Annexure A/4). The petitioner submitted his reply to the show cause by Annexure A/5. It is further pointed out by learned counsel appearing for the petitioner that the

respondents have sanctioned leave for absence of the petitioner in the month of February and March.

3. Despite sanctioning of leave in the month of February and March, the petitioner remained absent in the month of April also. During the period of probation, service of the petitioner was removed with one month's salary in lieu of notice, by order dated 20/21.4.1999, as no longer required.

4. It is well settled principle of law that if the service of the petitioner is on temporary basis, the employee can be removed from service as no longer required. There is no necessity to hold an enquiry before passing the removal order. It is apparent that despite show-cause notice, the petitioner has not mended his conduct and continued to remain absent for about 5 to 7 days in other month. There is no stigma attached to his removal order and no prejudice is caused to the petitioner that he was not given sufficient opportunity of hearing by submitting his response to the show-cause notice.

5. In the case of **Anoop Jaiswal Vs. Government of India and Another**[1], the Supreme Court held that where the form of the order is merely a camouflage for an order of dismissal for misconduct, it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order.

6. In the case of **High Court of Judicature at Patna Vs. Pandey Madan Mohan Prasad Sinha and others**[2], the Supreme Court observed in para 6, as under:-

> "6..... As regards a probationer, the law is well settled that he does not have a right to hold the post during the period

of probation. The position of a probationer cannot be equated with that of an employee who has been substantively appointed on a post and has a right to hold that post. An order terminating the services of a probationer can be questioned only if it is shown that it has been passed arbitrarily or has been passed by way of punishment without complying with the requirements of Article 311 (2) of the Constitution. Since a probationer has no right to hold the post on which he has been appointed on probation, he cannot claim a right to be heard before an order terminating his services is passed. The obligation to communicate the adverse material to a person before taking action against him on the basis of the said material is a facet of the principles of natural justice. But principles of natural justice have no application in the case of termination of the services of a probationer during the period of probation since he has no right to hold the post. It is, therefore, not possible to hold that there is an obligation to communicate the adverse material to a probationer before a decision is taken on the basis of the said material that he is not fit for being retained in service. Such material can be relied upon to show that such a decision does not suffer from the vice of arbitrariness and is not capricious. In this context it may be mentioned that even with respect to persons who have been substantively appointed on a post and have a right to hold that post, it has been held that the failure to communicate the adverse remarks in the service record would not vitiate the order of compulsory retirement. (See: Union of India v. M.E. Reddy[1] and Baikuntha Nath Das v. Chief Distt. Medical Officer[2].)"

7. In the case of **Union of India Vs. Rati Pal Saroj and Another[3]**, the Supreme Court observed para 8, as under:-

"8..... It is well settled that a probationer's service can be terminated during the period of probation if he is found unsuitable. No enquiry is necessary for such termination of

the services of a probationer. In the case of Samsher Singh v. State of Punjab[1] a Bench of this Court consisting of seven Judges, inter alia, held that the services of a probationer can be terminated when the authorities are satisfied regarding his inadequacy for the job, or unsuitability for temperamental or other reasons not involving moral turpitude, or when his conduct may result in dismissal or removal but without a formal enquiry. An enquiry is necessary only when the termination is by way of a punishment, and to determine this the substance of the order and not the form is decisive. The same position has been reaffirmed in Anoop Jaiswal v. Govt. of India[2] where the decision in Samsher Singh v. State of Punjab[1] has been quoted extensively. Before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. If it comes to the conclusion that the probationer is not suitable he is liable to the discharged. He cannot, in this situation, claim the benefit of Article 311 (2)."

8. In the case of **Chandra Prakash Shahi Vs. State of U.P. and others**[4], the Supreme Court observed in para 29, as under:-

"29. "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of

misconduct which were found to be true in the preliminary inquiry."

9. On the basis of above principles of law enunciated by the Supreme Court, in the facts of the present case, there is no motive or allegation of serious misconduct against the petitioner. On consideration of his lack of sincerity to the work for remaining absent unauthorizedly, it appears to have been found that the petitioner is not suitable for the job. Thus, the impugned order of removal with one month's salary in lieu of notice was passed. No proper domestic enquiry, in the facts of the present case, is necessary.

10. The impugned order does not tantamount to the order of dismissal for misconduct as the impugned order of removal is simpliciter, on the ground of "no longer required". The petitioner has not made out any case that this order is a camouflage for an order of dismissal for misconduct.

11. The writ petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu

1{(1984) 2 SCC 369}
2{(1997) 10 SCC 409)
3{(1998) SCC 574}
4{(2000) 5 SCC 152}